Supreme Court, U.S.
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No. _____

In The

# Supreme Court of the United States

ROBERTO JIMENEZ,

*Petitioner,*

versus

HIALEAH HOUSING AUTHORITY,

*Respondent.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED

Was the Court of Appeals' decision to affirm the district court's summary judgment on the grounds that petitioner failed to present sufficient evidence of pretext in this age discrimination case in conflict with precedent in this Court that an employee's *prima facie* case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated?

## PARTIES TO THE PROCEEDING

The parties to the proceeding are Roberto Jimenez ("Jimenez") and the Hialeah Housing Authority ("Authority") Richard Fusaro, who was an appellant/plaintiff below, is represented by separate counsel and has filed a separate petition for writ of certiorari with the Court (No. 00-1869). Hugo Hernandez, who was also an appellant/plaintiff in the proceedings below, has not participated in the filing of a petition for writ of certiorari. Maria M. Roca, who was an appellee/defendant below, is also not a party to these proceedings.

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## PETITION FOR WRIT OF CERTIORARI

Jimenez respectfully requests that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit ("Court of Appeals") in the case of *Richard Fusaro, Hugo Hernandez and Roberto Jimenez, Appellants v. Hialeah Housing Authority and Maria Roca, Appellees, Case No: 99-4155,* as said judgment pertains to Jimenez' age discrimination claim only.

## OPINIONS BELOW

The Court of Appeals' decision, which was filed with an opinion on August 16, 2000, is not reported.

The Court of Appeals affirmed the district court's order granting Authority's motion for summary judgment and supplemental motion for summary judgment which dismissed all of Jimenez' claims.

## STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was rendered final on March 8, 2001 when the Court of Appeals denied Jimenez' petition(s) for rehearing and petition(s) for rehearing *en banc.*

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISION

The Equal Protection Clause of the Fourteenth Amendment, Section 1, United States Constitution.

## CONCISE STATEMENT OF THE CASE

The fundamental question in this case is whether the decision of the Court of Appeals to affirm the district court's grant of summary judgment to Authority and to dismiss all of Jimenez' age discrimination claim conflicts with precedent in this Court.

Jimenez was a litigant under the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.* ("ADEA"), the Florida Civil Rights Act, § 760.01, Florida Statutes ("FCRA"), and other state and federal statutes. The original jurisdiction of the district court was invoked pursuant to 28 U.S.C. § 1331. The district court granted summary judgment to Authority and dismissed all of Jimenez' claims, including his age discrimination claim.

Jimenez timely appealed the summary judgment to the Court of Appeals. The Court of Appeals affirmed the district court's grant of summary judgment to Authority.

Believing that the Court of Appeals had overlooked or misapplied this Court's opinion in *Reeves v. Sanderson Plumbing Products, Inc.*, 120 S. Ct. 2097 (2000), Jimenez sought rehearing and rehearing *en banc* of the Court of Appeals' decision. The Court of Appeals denied Jimenez' petition(s) for rehearing and petition(s) for rehearing *en banc*.

## REASONS FOR GRANTING THE WRIT

In affirming the district court's grant of summary judgment that dismissed all of Jimenez' claims against Authority, including his age discrimination claim brought under the ADEA and the FCRA, the Court of Appeals applied a pretext-plus standard that was expressly rejected in *Reeves* where this Court found that the United States Court of Appeals for the Fifth Circuit had erred in proceeding from the premise that a plaintiff must always introduce additional, independent evidence of discrimination.

In granting summary judgment to Authority and dismissing Jimenez' age discrimination claim, the district court stated: "Because the plaintiff bears the burden of establishing pretext, he must present 'significantly probative evidence on the issue to avoid summary judgment' " (citing *Isenbergh v. Knight-Ridder Newspaper Sales, Inc.*, 97 F. 3rd 436, 444 (11th Cir. 1996), *cert. den.*, 117 S. Ct. 2511 (1997)). The district court went on to state: "That a plaintiff calls into question some assertions by defendant in support of defendant's justification is not enough; a plaintiff must call into question the veracity of defendant's ultimate justification itself." While noting that Jimenez had made out a *prima facie* case of age discrimination, the district court held that Jimenez had "offered no additional evidence of age discrimination" and that the evidence that was part of his *prima facie* case "cannot be used to rebut [Authority's] legitimate non-discriminatory reason for his termination."

The district court's pronouncement expressly conflicts with the *Reeves* opinion wherein this Court held: "A

plaintiff's *prima facie* case of discrimination . . . combined with sufficient evidence for a reasonable fact-finder to reject the employer's non-discriminatory explanation for its decision, may be adequate to sustain a finding of liability for intentional discrimination under the ADEA"; and "The fact-finder's disbelief of the reasons put forward by the defendant, together with the elements of the *prima facie* case, may suffice to show intentional discrimination."

In *Reeves,* this Court also stated: "Rejection of the defendant's proffered reasons will *permit* the trier of fact to infer the ultimate fact of discrimination. Proof that the defendant's explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination, and it can be quite persuasive."

It is manifest that the district court's order granting summary judgment to Authority and dismissing Jimenez' age discrimination claim conflicts with *Reeves* because it applied a pretext-plus standard requiring that a plaintiff must always introduce additional independent evidence of discrimination which standard this Court has expressly rejected.

Accordingly, the Court of Appeals' decision which affirmed the district court's grant of summary judgment to Authority and dismissed Jimenez' age discrimination claim conflicts with *Reeves* because the district court applied a pretext-plus standard that this Court has expressly disavowed.

## CONCLUSION

This case presents a question of significant importance – whether the Court of Appeals' decision to affirm the district court's grant of summary judgment to Authority that dismissed Jimenez' age discrimination claim conflicts with precedent in this Court that "a plaintiff's *prima facie* case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated."

Accordingly, Jimenez respectfully requests that his petition for writ of certiorari be granted.

Respectfully submitted,

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